

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ODED BEN-JOSEPH,

Plaintiff,

v.

MT. AIRY AUTO TRANSPORTERS,
LLC, *et al.*

Defendants.

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Civil No. JFM 07-1922

MEMORANDUM OPINION

This case arises out of a car accident between a Lincoln Town Car and a tractor-trailer truck that occurred in New Jersey. The defendants in this action are the owner of the truck, Mt. Airy Auto Transporters, LLC (“Mt. Airy”), the driver of the truck, Brian Rogers (“Rogers”), and the company that performed maintenance on the truck, Superior Auto Services, Inc. (“Superior”). Plaintiff, Oded Ben-Joseph, alleges three counts of negligence. (*See* Compl. ¶¶ 16–33.) Concomitant to each of these negligence counts is an allegation that defendants are liable for punitive damages. (*Id.* ¶¶ 20, 26, 33.) In a prior opinion, I denied defendants’ motion to dismiss the punitive damages claims. *See Ben-Joseph v. Mt. Airy Auto Transporters, LLC*, 529 F. Supp. 2d 604 (D. Md. 2008) (hereinafter *Ben-Joseph I*). Now, following the completion of fact discovery, defendants Mt. Airy and Rogers have filed a motion for summary judgment which again seeks dismissal of the punitive damages claims. For the reasons that follow, the motion for summary judgment will be granted.

FACTS

On December 8, 2005, plaintiff was a passenger in a Lincoln Town Car that was

proceeding in an easterly direction on Ridge Road in South Brunswick, New Jersey. (Compl. ¶ 9.) The Town Car, approaching the intersection, planned to take a left-hand turn onto Route One. (*Id.* ¶ 11.) Lawfully entering the intersection, the Town Car began to turn left when it was struck by the tractor-trailer driven by Rogers. (*Id.* ¶¶ 11–12.) Plaintiff has allegedly incurred extensive damages resulting from the accident. (*Id.* ¶ 15.)

Mt. Airy is a limited liability corporation formed by Robert Kirschner (“Kirschner”) for the purpose of transporting automobiles. Plaintiff portrays Mt. Airy as a “fly-by-night motor carrier” without procedures, regulations, or standards. (Pl.’s Opp’n at 1.) He also emphasizes that Kirschner, besides failing to put in place adequate policies and procedures to insure safe operation of the tractor-trailer, was not a mechanic, did not have a commercial driver’s license, and had no interest in reviewing the daily truck log. (*See, e.g.*, Kirschner Dep. at 21 (Kirschner not a mechanic); *id.* at 28 (Kirschner did not have license to drive truck); Rogers Dep. at 157 (Kirschner had no interest in reviewing logs).)

Rogers was hired by Mt. Airy to haul automobiles from one location to another. At the time he was hired, Rogers had completed a two-month course in driving a tractor-trailer and held a commercial driver’s license. (Rogers Dep. at 11–12.) He had approximately three-months experience driving tractor-trailer trucks before he was hired by Mt. Airy. (*Id.* at 15.) Prior to the accident, Rogers had a record as a reliable and safe employee. (Kirschner Dep. at 25–26.)

The tractor-trailer that was involved in the accident was purchased by Mt. Airy in October or November 2005. (*Id.* at 27–29.) Around this time, Mt. Airy had the truck inspected by defendant Superior. (*Id.* at 66.) Superior informed Kirschner that the truck “needed to have front brakes done,” (*id.* at 68), in particular that the front brake shoes and hardware should be

replaced (*id.* at 94). Superior also recommended that the brake drums be replaced, even though such a repair was not necessary to pass the Maryland State Inspection. (*Id.*) Mt. Airy instructed Superior to make all of the recommended repairs, even the ones not required by law. (*Id.* at 94 (“Q: And why did you authorize it if it was not needed for the Maryland state inspection? A: Because they recommended it, and whenever I brought a vehicle to them and they recommended a repair, I did it.”).) After these repairs were made, the tractor-trailer passed inspection. (*Id.* at 64.) Also in the month of November, the brake lights on the tractor-trailer were fixed. (*Id.* at 91.)

At the time of the accident, it is undisputed that Rogers attempted to brake but was unable to stop the tractor-trailer due to brake failure.¹ A post-accident inspection by the New Jersey State Police revealed a variety of problems with the truck’s brakes – in particular, all six of the air brakes failed, all six of the electrical brakes failed, the parking brake failed, and the “breakaway cable that triggers the [brakes of the trailer] in the event of a separation [from the truck] was not even connected.” (Pl.’s Opp’n at 5; *id.* Ex. 3, State Police Driver/Vehicle Examination Report; *id.* Ex. 2, State Police Crash Inspection Report.) The inspection also revealed that the condition of the brakes violated several Federal Motor Carrier Regulations. (*Id.* at 4.) For the purposes of this motion, I will assume that immediately in advance of the accident, the truck’s brakes were entirely inoperable.²

ANALYSIS

¹ Rogers did not inspect the brakes before the trip; he did inspect other parts of the tractor-trailer. (*See* Rogers Dep at 93.)

² Defendants dispute that the brakes were entirely inoperable, arguing that they were simply not operating at optimal efficiency. This factual dispute is of no consequence to the instant motion because it does not shed light on whether defendants acted with wanton and willful disregard. *See infra*.

In *Ben-Joseph I*, I ruled that New Jersey law governs the question of whether plaintiff's claim for punitive damages can proceed to trial. 529 F. Supp. 2d at 608. New Jersey's statute governing recovery of punitive damages provides as follows:

Punitive damages may be awarded to the plaintiff only if the plaintiff proves, by clear and convincing evidence, that the harm suffered was the result of the defendant's acts or omissions, and such acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions. This burden of proof may not be satisfied by proof of any degree of negligence including gross negligence.

N.J. Stat. Ann. § 2A:15 – 5.12(a).

The statute also defines the terms “actual malice” and “wanton and willful disregard”:

‘Actual malice’ means an intentional wrongdoing in the sense of an evil-minded act. . . .

‘Wanton and willful disregard’ means a deliberate act or omission with knowledge of a high degree of probability of harm to another and reckless indifference to the consequences of such an act or omission.

Id. § 2A:15 – 5.10.

Finally, the statute provides that “all relevant evidence” should be considered for the purpose of making a determination of whether or not to grant punitive damages. *Id.* § 2A:15 – 5.12(b). In particular, the statute instructs the factfinder to consider this non-exhaustive list of evidence:

- (1) The likelihood, at the relevant time, that serious harm would arise from the defendant's conduct;
- (2) The defendant's awareness or reckless disregard of the likelihood that the serious harm at issue would arise from the defendant's conduct;
- (3) The conduct of the defendant upon learning that its initial conduct would likely cause harm;
- (4) The duration of the conduct or any concealment of it by the defendant.

Id.

Defendants argue that plaintiff has put forth insufficient evidence to carry his punitive

damages claim forward to trial. I agree. In *Ben-Joseph I*, I stated that “[i]t is unclear at this time whether sufficient evidence will be produced during discovery to prove that defendants were aware of the defective breaks and wantonly disregarded the high degree of probable harm that this danger posed to others.” 529 F. Supp. 2d at 610. I now conclude that defendants were not aware of the defective breaks, and – while perhaps negligent – did not wantonly disregard a high degree of probable harm.

Of course, as plaintiff asserts, if there is a genuine issue of fact, summary judgment would be precluded because the continued operation of a tractor-trailer with the knowledge that the brakes are failing could well constitute willful and wanton disregard. *See Smith v. Whitaker*, 713 A.2d 20 (N.J. Super. Ct. App. Div. 1998). Plaintiff, however, has not produced evidence sufficient to dispute this issue. As an initial matter, the only person with actual knowledge on this issue – Rogers – has testified, unconditionally, that he did not know that the brakes were failing in advance of the accident:

Q: And at any point in time on Route 1, had you felt anything unusual whatever regarding the braking of the tractor trailer?

A: No. No. Everything seemed normal. Again, the brakes had just been replaced, to my knowledge at least, and so I felt very secure in the truck.

Q: I understand that. But let me ask you more specifically. Listen to my question if you would. During any of the stop lights on Route 1, did the truck in any way, shape, or form stop in an unusual fashion?

A: No.

Q: Were the brakes less responsive than they had been during your trip to Georgia in any way?

A: No. They were – they felt the same as they did in – on my trip to Georgia.

(Rogers Dep. at 97–98.)

To counter this testimony, plaintiff cites the report of his putative expert, David Stopper, as well as the deposition of David Taggart, an employee of defendant Superior. (*See Pl.’s Opp’n*

Ex. 4, Stopper Expert Report; *id.* Ex. 8, Taggart Dep.) This evidence is insufficient to create a genuine issue of material fact. First, *nowhere* does Mr. Stopper’s report state or imply that Rogers must have known the brakes were failing. (*See generally* Pl.’s Opp’n Ex. 4, Stopper Expert Report.) In contrast, Taggart’s deposition does state his view that Rogers had to have known that the brakes were failing in advance of the accident. (*See* Pl.’s Opp’n Ex. 8, Taggart Dep. at 139–40.) However, the deposition of Taggart is not sufficient to create a genuine issue of material fact on this issue. As an employee of the mechanic who did the repairs to the truck’s brakes, Taggart clearly has an incentive to argue that Rogers was at fault for this accident. More importantly, it does not appear that Taggart is being offered by plaintiff as an expert witness. Thus, his hypothetical speculation about whether or not Rogers knew that the brakes were failing is just that – speculation – and is insufficient to create a disputed issue of fact. *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985) (“The nonmoving party, however, cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another.”).

As legal support for his position, plaintiff relies almost exclusively on *Smith*, 713 A.2d 20. In *Smith*, plaintiff’s decedent was driving when she was struck by an oil truck, which the defendant-driver was unable to stop “[d]ue to maladjusted rear brakes” *Id.* at 22. The *Smith* court upheld the jury’s award of punitive damages. *Id.* at 34. However, the facts of *Smith* are distinguishable from the ones in the instant case. In *Smith*, the driver of the oil truck was “completely inexperienced” and “virtually untrained;” he did not even have a commercial driver’s license. *Id.* He had “never operated anything larger than a pick-up truck” before his employment with the defendant-company, and “never claimed he knew how to drive” the truck

in question.³ *Id.* Moreover, and perhaps most importantly to my resolution of the instant motion, the driver in *Smith* admitted that “he knew that the brakes needed adjustment” at the time of the accident, *id.*, and that there had been “a number of problems with [the] vehicle during the two-week period before the” accident, including problems with the brakes, *id.* at 35. Additionally, the driver “had informed management” of the defendant-company that “there were problems with [the vehicle’s] brakes.” *Id.* The evidence showed that management had taken no steps to remedy the issue, and that the defendant-company had “*knowingly and deliberately*” allowed for the vehicle to be operated with the problems for several weeks in advance of the accident. *Id.* (emphasis added).

In the instant case, I find no evidence of such grave and troubling misconduct, let alone wanton and willful disregard, on the part of either Rogers or Mt. Airy. The factual distinctions between *Smith* and the instant case are sufficient to take the latter out of the universe of cases where punitive damages are appropriate. Unlike the driver in *Smith*, Rogers held a commercial driver’s license, and had at least three months experience driving similar tractor-trailers at a different job. Additionally, as discussed *supra*, the evidence establishes that Rogers *did not know* that the brakes were failing until he began attempting to stop at the intersection of Ridge Road and Route One. This evidence supports a finding that Rogers did not wantonly and wilfully disregard the well-being of others; rather, he believed himself to be a qualified driver and believed the truck to be in normal operating condition.

The evidence shows that Mt. Airy did not wantonly and wilfully disregard the well-being of others. Mt. Airy made a reasonable decision to hire a licensed and experienced driver. It

³ In *Smith*, punitive damages were awarded only against the defendant-company, not the defendant-driver. 713 A.2d at 23 (noting that plaintiff agree to waive punitive damages claim as against the defendant-driver).

sought to insure that the vehicle was in good operating condition by making all recommended repairs. Mt. Airy apparently violated several federal regulations, and undoubtedly could have been better managed. However, the evidence falls far short of the high standard that New Jersey requires for punitive damages. Accordingly, the motion for summary judgment on the punitive damages claim filed by Rogers and Mt. Airy is granted.

A separate order effecting the rulings made in this Memorandum is being entered herewith.

October 20, 2008

/s/
J. Frederick Motz
United States District Judge

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Civil No. JFM 07-1922

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is, this 20th day of
October 2008

ORDERED that defendants' motion for summary judgment on the plaintiff's punitive
damages claim is granted.

/s/

J. Frederick Motz
United States District Judge